

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VINCENT SAN FILIPPO,

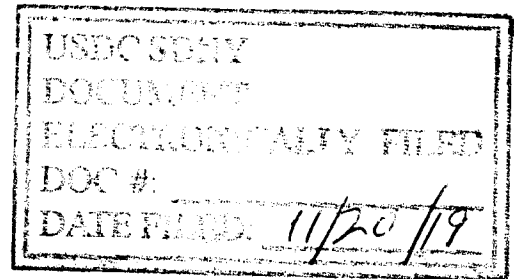
Plaintiff,

-against-

NANCY A. BERRYHILL,

Defendant.  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE



**ORDER**

18-CV-10156 (VSB) (KNF)

Vincent San Filippo (“San Filippo”) commenced this action against the acting Commissioner of Social Security (“Commissioner”) seeking review of an administrative law judge’s (“ALJ”) January 31, 2018 decision. On October 2, 2015, San Filippo filed an application for disability insurance benefits, pursuant to Title II of the Social Security Act (“SSA”), 42 U.S.C. §§ 401-434, alleging disability since October 2, 2013. A hearing was held before ALJ Robert Gonzalez on September 12, 2017. The ALJ issued his decision on January 31, 2018, finding that San Filippo had not been under a disability as defined in the Social Security Act from October 2, 2013, through the date of the decision and, therefore, denying San Filippo’s application for disability benefits. The ALJ’s decision became final on September 24, 2018, when the Appeals Council denied San Filippo’s request for review. Before the Court are the parties’ respective motions for judgment on the pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Absent from the parties’ submissions in support of their motions is any discussion of whether the presiding ALJ in this case was properly appointed under the Constitution, an issue addressed by the Supreme Court in Lucia v. S.E.C., \_\_ U.S. \_\_, 138 S. Ct. 2044 (2018) in

connection with the appointment of administrative law judges of the Securities and Exchange Commission (“SEC”). In that case, the Supreme Court held that SEC administrative law judges are officers of the United States, subject to the Appointments Clause of the Constitution, see id. at 2049, and that in a circumstance in which an adjudication is tainted with an appointments violation, the appropriate remedy “is a new ‘hearing before a properly appointed’ official.” Id. at 2055 (citation omitted). “To cure the constitutional error, another ALJ . . . must hold the new hearing.” Id.

Since the ALJ in San Filippo’s case conducted a hearing on September 12, 2017, prior to proper appointment, on July 16, 2018, see SSR 19-1P (2018) (“To address any Appointments Clause questions involving Social Security claims, and consistent with guidance from the Department of Justice, on July 16, 2018, the Acting Commissioner of Social Security ratified the appointments of our ALJs and approved those appointments as her own.”), the question remains whether San Filippo’s case was heard by a properly appointed official and, thus, whether remanding the matter to a different ALJ from the one who heard San Filippo’s case on September 12, 2017, is warranted. To aid the Court in analyzing the parties’ motions, on or before November 27, 2019, the parties shall submit to the Court memoranda of law, not to exceed five pages, addressing the above-noted issue.

Dated: New York, New York  
November 20, 2019

SO ORDERED:

  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE